



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed
in the Territory of the Former Yugoslavia
since 1991

Case No.: IT-03-67-T
Date: 12 March 2009
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French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Acting Registrar: Mr John Hocking

Decision of: 12 March 2009

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON ADMISSION OF EVIDENCE PRESENTED DURING
TESTIMONY OF ALEKSANDAR STEFANOVIĆ**

The Office of the Prosecutor

Mr Daryl Mundis
Ms Christine Dahl

The Accused

Mr Vojislav Šešelj

I. INTRODUCTION

1. Trial Chamber III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the territory of the former Yugoslavia since 1991 (“Tribunal”) is seized of an oral application by the Office of the Prosecutor (“Prosecution”) submitted during the testimony of Aleksandar Stefanović (“Mr Stefanović”) on 25 November 2008, for the admission of his two prior statements to the Prosecution as well as the documents annexed to one of the statements.¹ Vojislav Šešelj (“Accused”) orally objected to the admission of the statements and annexed exhibits.²

II. PROCEDURAL BACKGROUND

2. During the direct examination of Mr Stefanović, the Prosecution requested that the following documents be admitted into evidence:

- 65 *ter* Document 7416 marked for identification as “MFI P633”: Statement by Mr Stefanović dated 6-7 and 12 February 2003 (“Statement of 2003”);³
- 65 *ter* Document 7417 marked for identification as “MFI P634”: Statement by Mr Stefanović dated 12, 15 and 16 June 2006 (“2006 Statement”);⁴
- 65 *ter* Document 239 marked for identification as “MFI P635”: Interception dated 25 May 1991 between Branislav Gavrilović and Maja Gojković (“MFI P635”);⁵
- 65 *ter* Document 369 marked for identification as “MFI P636”: Intercept of a conversation between Darko Pesić and an unidentified woman (“MFI P636”);⁶
- 65 *ter* Document 404 marked for identification as “MFI P637”: Intercept of a conversation between Darko Pesić and Aleksandar Stefanović (“MFI P637”);⁷
- 65 *ter* Document 416 marked for identification as “MFI P638”: Intercept of a conversation between Darko Pesić and Konstantin Simonović a.k.a. Kosta (“MFI P638”);⁸
- 65 *ter* Document 431 marked for identification as “MFI P639”: Intercept between Darko Pesić and Rade Cubrilo (“MFI P639”);⁹
- 65 *ter* Document 433 marked for identification as “MFI P640”: Conversation between Darko Pesić and Aleksandar Stefanović (“MFI P640”);¹⁰
- 65 *ter* Document 436 marked for identification as “MFI P641”: Intercept of a conversation between Darko Pesić and Panić (“MFI P641”);¹¹

¹ Hearing of 25 November 2008, Transcript in French (“T(F)”). 12130-12132.

² Hearing of 25 November 2008, T(F). 12131-12132.

³ Hearing of 25 November 2008, T(F). 12132.

⁴ Hearing of 25 November 2008, T(F). 12132.

⁵ Hearing of 25 November 2008, T(F). 12135.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

- 65 *ter* Document 473 marked for identification as “MFI P642”: Intercept of a conversation between Mirko Jović and Jovan Tintor dated 08.09.1991 (“MFI P642”);¹²
- 65 *ter* Document 990 marked for identification as “MFI P643”: Intercept of a conversation between Ljubo Grković and Radovan Karadžić dated 22.02.1992 (“MFI P643”);¹³
- 65 *ter* Document 6066 marked for identification as “MFI P644”: Interview with the Accused titled “The Death of Yugoslavia” (“MFI P644”);¹⁴
- 65 *ter* Document 1836 marked for identification as “MFI P645”: STV Video – interview of Vojislav Šešelj;¹⁵
- 65 *ter* Document 778 marked for identification as “MFI P646”: Signed and stamped authorization for Milan Dobrilović to ensure “law and order” in Eastern Slavonia (“MFI P646”);¹⁶
- 65 *ter* Document 192 marked for identification as “MFI P647”: Letter from Ljubiša Petković, president of the municipal section of the Serbian Radical Party and the Belgrade Crisis Staff (“MFI P647”);¹⁷
- 65 *ter* Document 1816 marked for identification as “MFI P648”: Signed and stamped request sent to Vojislav Šešelj by Lazar Janjić, Posavina second infantry command in Bosanski Samac, for additional forces (volunteers of the Serbian Radical Party and Serbian Chetnik Movement) in Pelagićevo (“MFI P648”);¹⁸
- 65 *ter* Document 1636 marked for identification as “MFI P649”: Certificate indicating that Branislav Vakić participated, along with 19 others, in the liberation of Podveležje and defeat in Banjdoš-Sipovac-Sveta Gora (“MFI P639”);¹⁹
- 65 *ter* Document 1800 marked for identification as “MFI P650”: Report from the Ninth Motorized Brigade Command in Gračac to the Niš Serbian Radical Party on the work of the groups of volunteers, signed and stamped by Jovo Kordić on 26 February 1993 (“MFI P650”);²⁰
- 65 *ter* Document 1802 marked for identification as “MFI P651”: Request for ammunition and military equipment for the Serbian Radical Party War Staff, signed and stamped by the Commander of the Prijedor 43rd Motorized Infantry Brigade (“MFI P651”);²¹
- 65 *ter* Document 1108 marked for identification as “MFI P652”: Request from the headquarters of the Derventa defence for the Serbian people to the Serbian Radical Party for personnel assistance (“MFI P652”);²²
- 65 *ter* Document 1039 marked for identification as “MFI P653”: Receipt for 20,000 dinars from Belgrade military post 1122-12 for official travel to Sarajevo, Bihać, Banja Luka (“MFI P653”);²³
- 65 *ter* Document 1829 marked for identification as “MFI P654”: Signed and stamped document, issued by the Office of the Prime Minister of Republika Srpska (“MFI P654”);²⁴

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.* The Chamber notes that at p. 12135 the French version of the transcript erroneously refers to 65 *ter* number 8136.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

- 65 *ter* Document 1018 marked for identification as “MFI P655”: Request for assistance for the dispatch of personnel from the SDS Zenica Municipal Council to the Serbian Radical Party (“MFI P655”).²⁵

3. Additionally, during the cross-examination of Mr Stefanović, the Chamber required that the original BCS version of the 2006 Statement - 65 *ter* Document 7417a - (“2006 Statement in BCS”) be marked for identification as “MFI P656”.²⁶

III. APPLICABLE LAW

4. The Rules of Procedure and Evidence (“Rules”) do not explicitly address the question of whether a prior witness statement may be admitted and for what purposes. It is therefore necessary to turn to the general provisions of the Rules of evidence and the jurisprudence of this Tribunal to determine the issue. Rule 89 (C) of the Rules entitles a Chamber to “admit any relevant evidence which it deems to have probative value” provided that the rights of an accused to a fair trial are ensured.²⁷

5. Prior statements of witnesses who have testified before the Tribunal may be admitted into evidence when the party calling the witness intends to impeach their credibility.²⁸ When admitting the prior statement of a witness, the Chamber shall give explanations as to the intended objective – such as the impeachment of the credibility of the witness and/or the admission of the statement as evidence related to the merits of the case – in order to assess any prejudice caused to the Accused. In any event, Trial Chambers have broad discretionary power in this area.²⁹

6. The Chamber further recalls the fundamental distinction that exists between the admissibility of documentary evidence and the weight that will be attributed to this evidence in light of the entire record.³⁰ Indeed, at this stage of the proceedings, the Chamber need not make a final assessment of the relevance, reliability and the probative value of the evidence. That exercise will only be carried out at the end of the trial in the light of all the evidence, both inculpatory and

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Hearing of 26 November 2008, T(F). 12248-12250.

²⁷ See “Decision on the Prosecution’s Oral Motion Seeking the Admission into Evidence of Witness Nebojša Stojanović”, 11 September 2008 (“Decision of 11 September 2008”), para. 8.

²⁸ *Ibid.* para. 9.

²⁹ *Ibid.* para. 11; *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.3, Decision on Appeals Against Decision on Impeachment of a Party’s Own Witness, 1 February 2008, para. 32.

³⁰ See Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial, 15 November 2007 (“Guidelines”), Annex, para. 2.

exculpatory, that will have been admitted into the record, and until that stage, the Chamber reserves the possibility to exclude certain evidence from the record.³¹

IV. THE REQUEST FOR ADMISSION OF THE WRITTEN STATEMENTS OF 2003 AND 2006

A. The Statement of 2003 (MFI P633)

7. In his Statement of 2003, Mr Stefanović gave a detailed explanation of his political activities since 1990, first within the Serbian Chetnik Movement (“SČP”), where he was Vice-President, then within the Serbian Radical Party (“SRS”) beginning in February 1991 when he was Secretary General and a member of the Central Homeland Administration up until 1996.³² Mr Stefanović explained that the Accused was officially the head of the SRS, even though he otherwise headed the SČP.³³ Furthermore, Mr Stefanović provided information related to the structure of the SRS and the SČP, which from 23 February 1991 were headed by the Accused.³⁴

8. During its direct examination, the Prosecution showed Mr Stefanović his signed statement in English as well as the translation in BCS, which did not bear the witness’s signature.³⁵ After some hesitation,³⁶ Mr Stefanović finally acknowledged signing his Statement of 2003,³⁷ specifying nonetheless that the interpreter certification indicating that the statement prepared in English had been translated orally into Serbian, was incorrect.³⁸ To justify the fact that he had signed a document in English that had not been translated for him into a language he understands, Mr Stefanović indicated that he was simply keeping his word, considering the assurances given at the time that he would not have to testify before the Tribunal.³⁹

³¹ See also *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision to Admit Documentary Evidence Presented by the Prosecution, confidential, 5 October 2007, p. 7.

³² Statement of 2003, p. 3.

³³ *Id.*, p. 5.

³⁴ *Id.*, 13.

³⁵ Hearing of 25 November 2008, T(F). 12066.

³⁶ Hearing of 25 November 2008, T(F). 12066-12067. Mr Stefanović first responded that “probably the signature was right”³⁶ and explained that his response to the question of whether his signature was indeed on the certificate signed by the witness was “both yes and no”.

³⁷ Hearing of 25 November 2008, T(F). 12072.

³⁸ Hearing of 25 November 2008, T(F). 1072-1074.

³⁹ Hearing of 25 November 2008, T(F). 12064. Mr Stefanović then explained that when the Accused was indicted, in 2003, he was a member of the Christian Democratic Party (“DOS”) led by Mr Đinđić and Mr Babić with whom the issue was raised at the time as to the radicals and the various means to put an end to their activities. Mr Stefanović explained that his statement was thus signed, “having been told to do so by Dr. Zoran Djindjić” and the Prosecutor of the Tribunal. See also hearing of 25 November 2008, T(F). 12074, and hearing of 26 November 2008, T(F). 1226-1227; 12242.

B. The 2006 Statement and the 2006 Statement in BCS (MFI P634 and MFI P656, respectively)

9. Mr Stefanović gave a second statement to the Prosecution in 2006 (“2006 Statement”) which supplements his Statement of 2003⁴⁰ and generally reiterates the information contained therein.

10. In direct examination, the Prosecution also asked the witness to examine the 2006 Statement and the signature on it, to state whether that signature was indeed his own.⁴¹ Mr Stefanović agreed to signing that statement, but only after third parties intervened.⁴² Moreover, when shown the interpreter certification signed by the witness and appearing at the end of the 2006 Statement, according to which the statement had been read to Mr Stefanović in a language he understands, the witness stated that this was incorrect and that “it's never been read in Serbian, nor ha[d] [he] ever read this. This is the first time [he was] looking at this.”⁴³

C. Discussion

11. The Chamber observes that during his testimony before the Chamber, Mr Stefanović gave evidence on most of the subjects set forth in his prior statements, which the Chamber considers relevant in the context of the present case.⁴⁴ Even if Mr Stefanović partly retracted the content of his prior statements in court, the parties expressly referred to those statements during the testimony of the witness. As such, while the Prosecution clearly used the statements to test Mr Stefanović’s credibility,⁴⁵ in cross-examination the Accused also referred to the “statement written by the Prosecution, which they say [Mr Stefanović had] signed”, in order to elicit commentary from the

⁴⁰ Prior statement of Mr Stefanović, MFI P634, para. 5. Mr Stefanović reportedly gave a statement on 4 August 2005 which was not disclosed to the Chamber.

⁴¹ Hearing of 25 November 2008, T(F). 12062.

⁴² *Cf. supra.* para. 8.

⁴³ Hearing of 25 November 2008, T(F). 12065.

⁴⁴ For example, Mr Stefanović gave evidence about his political activities (hearing of 25 November 2008, T(F). 12080-12081); the creation by the Accused of the SČP in January 1990 (hearing of 25 November 2008, T(F). 12081; hearing of 26 November 2008, T(F). 12159-12161); his participation with the Accused in the creation of the SČP and his position as Vice-President (hearing of 25 November 2008, T(F). 12086, 12088); the conflicts which arose between the Accused and Mr Drašković (hearing of 25 November 2008, T(F). 12083); the control (through the SDB) that Mr Milošević exercised over the political parties and his relationship with the Accused (hearing of 25 November 2008, T(F). 12083; hearing of 26 November 2008, T(F). 12197-12200); the political platform of this movement, which the witness states he helped conceive (hearing of 25 November 2008, T(F). 12088). Mr Stefanović further provided information related to the functioning of the SRS (hearing of 25 November 2008, T(F). 12096) and to the existence of a war staff within it (hearing of 25 November 2008, T(F). 12115; hearing of 26 November 2008, T(F). 12161-12162).

⁴⁵ *See* for example, hearing of 25 November 2006, T(F). 12083, 12100, 12126, 12128.

witness about certain subjects raised in these statements.⁴⁶ The Chamber further noted during the hearings the numerous contradictions between the witness's prior statements and his testimony.⁴⁷

12. The Chamber further notes that when the Prosecution's questions went to the acts and conduct of the Accused at the material time, the witness, when he did in fact answer the questions, gave evasive answers, and he was reminded of this on several occasions in court.⁴⁸

13. The Chamber considers that from the in-court proceedings it is clear that Mr Stefanović retracted, if not partially and at times completely, his prior statements, either by giving vague answers to the questions posed, or by contradicting the information contained in these statements by alleging that he was not the author of them, all the while confirming that he had signed them.

14. In light of the foregoing, the Chamber considers that Mr Stefanović's prior written statements are not only relevant and *prima facie* probative with respect to the present case, but that they are also essential in assessing the credibility of the witness as well as his testimony as a whole before the Chamber.

15. Consequently, the Chamber considers that at this stage the Statements of 2003 and 2006 must be admitted into evidence. It will then be for the Chamber to assess, in its Judgement, the weight that should be attached to them, in light of all of the evidence at its disposal.

V. THE RETURN OF THE ORIGINAL 2006 STATEMENT TO THE PROSECUTION

16. In an email, the Prosecution informed the Chamber that it wished the original 2006 statement of Aleksandar Stefanović in BCS, which was tendered for admission, to be returned to the Prosecution's Evidence Unit.

17. In accordance with Rule 41 of the Rules, "the Prosecutor shall be responsible for the retention, storage and security of information and physical material obtained in the course of the Prosecutor's investigations until formally tendered into evidence". Nevertheless, Rule 81(C) of the Rules provides that the Registrar shall retain and preserve all physical evidence offered during the proceedings, subject to any Practice Direction or any order which a Chamber may at any time make with respect to the control or disposition of physical evidence offered during proceedings before

⁴⁶ See for example, hearing of 26 November 2008, T(F). 12179; 12202; 12212-12213; 12220; 12227.

⁴⁷ Hearing of 25 November 2008, T(F). 12182; 12220; 12232. As an example, the Chamber notes the contradictions in the statements of Mr Stefanović concerning: (1) the role of the war staff created within the SRS, see hearing of 25 November 2008, T(F). 12116, 1220, 1232; (2) the recruitment and dispatch of volunteers by the SRS to the front, see hearing of 25 November 2008, T(F). 1218-1219, 12122; (3) the leadership of the SRS war staff, see hearing of 25 November 2008, T(F). 12117-12125.

⁴⁸ See for example hearing of 25 November 2008, T(F). 12065-12070, 12071, 12077, 12092, 12114, 12120.

that Chamber. As the 2006 Statement has been tendered into the record, the original version in BCS will therefore be preserved by the Registry.

VI. THE REQUEST FOR ADMISSION OF EXHIBITS ANNEXED TO THE 2006 STATEMENT

18. The Chamber first notes that Exhibits MFI P645 and MFI P647 have already been admitted into the record (under numbers P255 and P208, respectively).

19. The Chamber recalls that, in the present case, evidence must in principle be tendered through witnesses, unless there are exceptional circumstances to be examined on a case-by-case basis,⁴⁹ which is a matter within the discretionary power of the Chamber.

20. At the beginning of the hearing, the Prosecution announced that the direct examination of Mr Stefanović would last for two hours.⁵⁰ At the end of the direct examination, the Prosecution had used only 1 hour and 39 minutes of the total time announced. Therefore, it could very well have presented some, if not all, of the documents annexed to the 2006 Statement so that the witness could comment on them. The Prosecution nevertheless chose not to proceed in this manner, and merely requested that Documents MFI P635, MFI P636, MFI P637, MFI P638, MFI P639, MFI P640, MFI P641, MFI P642, MFI P643, MFI P644, MFI P646, MFI P648, MFI P649, MFI P650, MFI P651, MFI P652, MFI P653, MFI P654 and MFI P655, annexed to the witness's 2006 Statement, which he disputes, be admitted into evidence,⁵¹ without putting forth any argument in support of this request.

21. Consequently, the Chamber considers that none of these documents⁵² may be admitted into evidence. The Chamber recalls nonetheless that the Prosecution still has the possibility of presenting them through other witnesses it intends to call and, where appropriate, at the end of its case-in-chief, by way of written motion, justifying the exceptional circumstances.

⁴⁹ Guidelines, Annex, para. 1.

⁵⁰ Hearing of 25 November 2008, T(F). 12061.

⁵¹ Hearing of 25 November 2008, T(F). 12133.

⁵² Listed in para. 20 above.

VII. DISPOSITION

22. For these reasons, in accordance with Rules 54 and 89 of the Rules, **PARTIALLY GRANTS** the Prosecution's oral motion and **ORDERS** that

- (1) the statement by Mr Stefanović dated 6, 7 and 12 February 2003 be admitted into evidence and definitively marked P633;
- (2) the statement by Mr Stefanović dated 12, 15 and 16 June 2006 be admitted into evidence and definitively marked P634.
- (3) the original BCS version of the statement by Mr Stefanović dated 12, 15 and 16 June 2006 be admitted into evidence, definitively marked P656 and be preserved with the Registry.

DENIES the requests for the admission into evidence of Exhibits MFI P635, MFI P636, MFI P637, MFI P638, MFI P639, MFI P640, MFI P641, MFI P642, MFI P643, MFI P644, MFI P646, MFI P648, MFI P649, MFI P650, MFI P651, MFI P652, MFI P653, MFI P654 and MFI P655.

DISMISSES AS MOOT the requests for admission into evidence of Exhibits MFI P645 and MFI P647.

Done in English and in French, the French version being authoritative.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twelfth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

SEPARATE OPINION OF JUDGE JEAN-CLAUDE ANTONETTI

1. The Trial Chamber unanimously granted the request for the admission of the 2003 statement (MFI P633) and the 2006 statements (MFI P634 and P656).
2. In paragraph 14 of its decision, the Chamber considers that these prior written statements are not only relevant, and *prima facie* probative, but that they are also essential in assessing the credibility of the witness.
3. This reasoning by all of the Judges of the Chamber should also be applied to the other witnesses concerned by the contempt proceedings before the Court. Indeed, it would be in the interests of justice to admit **all** of the statements made prior to the allegations of intimidation.

Done in English and in French, the French version being authoritative.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twelfth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]